

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

DANIEL J. AUDETT,

Plaintiff,

v.

ALAN MCLAUGHLIN, *et al*,

Defendants.

Case No. C04-5814RJB

ORDER REGARDING  
PLAINTIFF'S SECOND MOTION  
FOR EXTENSION OF TIME TO  
RESPOND TO ORDER TO  
SHOW CAUSE

This matter has been referred to Magistrate Judge Karen L. Strombom pursuant to 28 U.S.C. § 636(b)(1), Local Magistrates Rules MJR 3 and 4, and Rule 72 of the Federal Rules of Civil Procedure. The case is before the court on plaintiff's second motion for extension of time (Dkt. #19) to respond to the court's second order directing plaintiff to file an amended complaint or show cause why this matter should not be dismissed (Dkt. #15). After reviewing the motion, and plaintiff's declaration in support thereof (Dkt. #20), the court hereby finds and orders as follows:

On February 25, 2005, plaintiff filed a motion for extension of time to respond to the court's order to show cause and a declaration in support thereof. In his declaration, plaintiff stated that on January 27, 2005, he was transferred from the SCC to an outside hospital for various medical procedures. Apparently, he returned to the SCC on February 2, 2005, and did not receive his mail, including defendant's motion, until February 12, 2005. Plaintiff requested that he be allowed until May 20, 2005, to respond to the court's second order to show cause, in order to allow him to address significant medical needs, including a pending hip operation currently set for sometime in April 2005. Plaintiff indicated he anticipated being

1 fully recovered and able to respond to the court's order to show cause by that date.

2 On March 3, 2005, the court granted plaintiff's motion, and gave him until May 20, 2005, to file an  
3 amended complaint. (Dkt. #18). On May 17, 2005, however, plaintiff filed his second motion to extend  
4 time, this time requesting an extension of ninety days. In his declaration in support of his second motion,  
5 plaintiff states that he has not yet had his hip replacement surgery and is still in the intensive care unit  
6 without access to his records concerning this case, but hopes he will have that surgery soon.

7 The undersigned finds unpersuasive plaintiff's reasons for requesting an additional extension of  
8 time. Plaintiff already has had more than ninety days in which to respond to the court's second order to  
9 show cause. Now plaintiff wants an additional ninety day extension, even though he does not know when,  
10 if ever, he will be having hip replacement surgery. Further, although plaintiff claims he is unable to access  
11 his records while in the intensive care unit, the record shows that he is able to keep up with this case  
12 sufficiently enough to file two motions for extensions of time.

13 The court cannot wait indefinitely for plaintiff to file an amended complaint. Therefore, plaintiff  
14 shall respond to the court's second order to show cause (Dkt. #15) by **no later than June 26, 2005**, or the  
15 undersigned will recommend dismissal of this action. In the alternative, because defendants have not yet  
16 been served with the complaint, plaintiff has the right to voluntarily dismiss this case without prejudice by  
17 filing a notice of dismissal with the court. Federal Rule of Civil Procedure 41(a)(1). If plaintiff chooses to  
18 voluntarily dismiss this case, his notice of dismissal also shall be filed by **no later than June 26, 2005**, or  
19 the court again will recommend dismissal of this action. Accordingly, plaintiff's motion for an extension of  
20 ninety days to respond to the court's second order to show cause (Dkt. #19) is DENIED.

21 The Clerk is directed to re-note the court's second order to show cause (Dkt. #15) for June 26,  
22 2005, and to send a copy of this Order to plaintiff.

23 DATED this 26th day of May, 2005.

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27 Karen L. Strombom  
28 United States Magistrate Judge